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The Administrative Voluntary Disclosure Process

Draft

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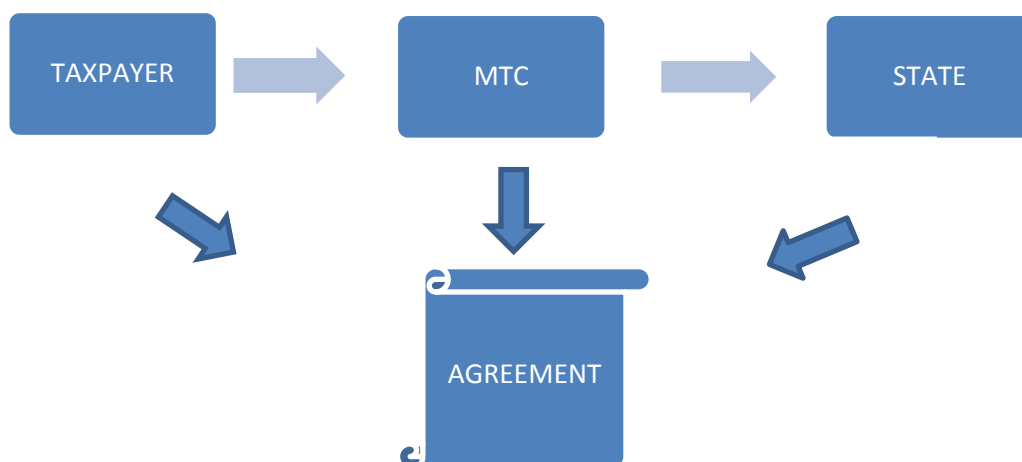
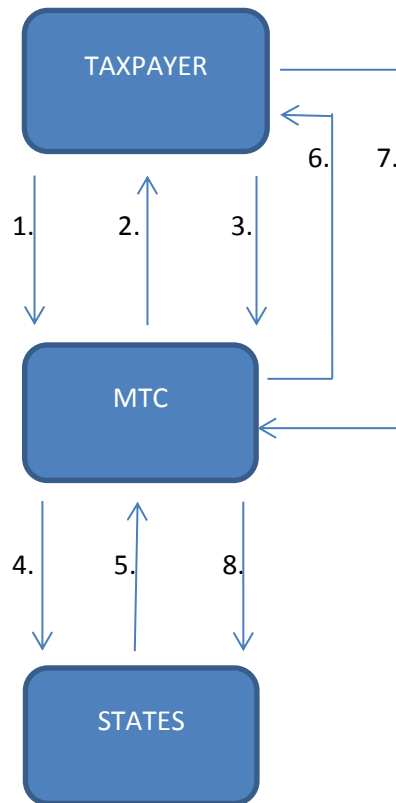


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GENERAL OVERVIEW



VDA PROCESS

STEPS

1. Contact made by Taxpayer
2. Draft VDA sent to Taxpayer
3. Receives Taxpayer’s Approval of draft VDA.
4. Send VDA to States.
5. Receive State’s approval, rejection or counter-offer.
6. If State accepts—MTC signs and sends signed VDA to Taxpayer.
7. Taxpayer returns the fully executed VDA, along with payments, registration forms, spreadsheets and/or actual returns (the complete VDA package) to the MTC.
8. MTC certifies the VDA and forwards the complete VDA package to the state.

MAJOR ADMINISTRATIVE GOALS

- **Client Satisfaction**
- **Timeliness**
- **Accuracy**
- **Confidentiality**

MAJOR VOLUNTARY DISCLOSURE PROCEDURAL CODING AND FILING SYSTEMS

CURRENT SYSTEMS:

- **NNP Anonymous MTC Identifier (MTC-YY-XXX)**

All taxpayers upon initial contact with the Voluntary Disclosure Program receive an anonymous number identifier no matter how that contact is made. The anonymous number (also called MTC number) consists of the last two digits of the current tax year (YY=2014, etc.) and the remaining digits follow in sequential numerical order (XXX= 1, 2, 3, etc.). The initial contact date is the first date of the “protection period” granted to the taxpayer (See *Procedures of Multistate Voluntary Disclosure*).

- **The Voluntary Disclosure Database**

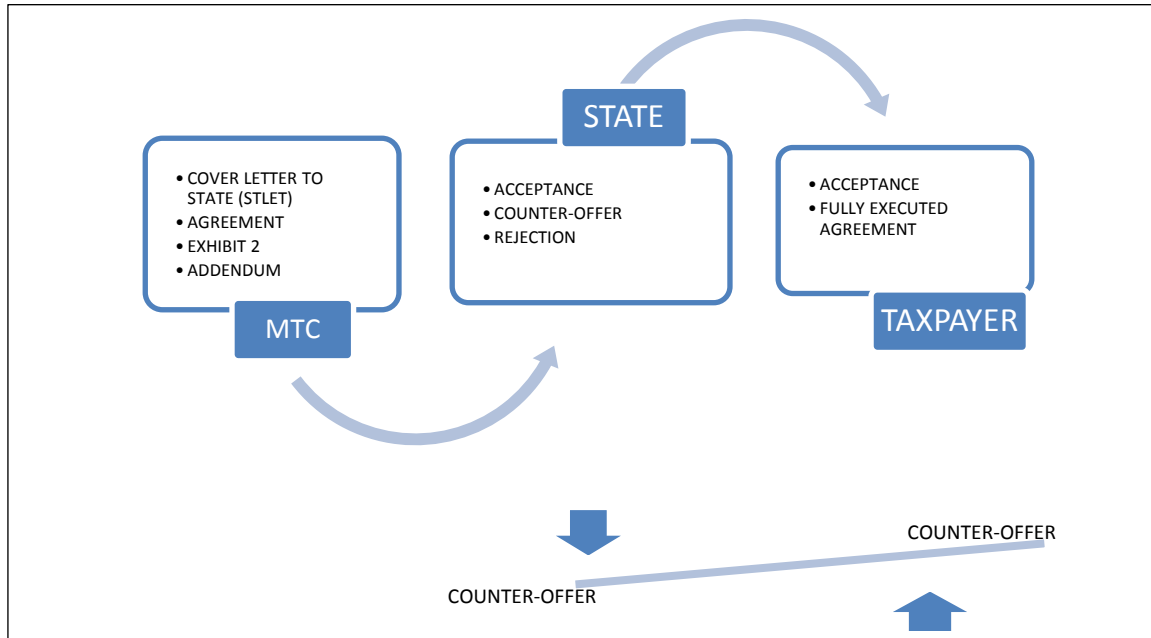
All taxpayers who come forward under the Voluntary Disclosure Program are logged into the Voluntary Disclosure Database. The database is the basic tool in which the program captures and synthesizes all confidential taxpayer information.

On-line Applications. When a taxpayer submits its application through the on-line process, the taxpayer automatically receives its anonymous number identifier and its contact information is e-Filed into the Voluntary Disclosure Database. taxpayer also receives an application number at that time.

Manual Database Entries. When a taxpayer submits its application through the postal service, in PDF or Word.doc formats (through the NEXUS MAILBOX), the principle MTC Staff person manually enters the taxpayers contact information into the Voluntary Disclosure Database and obtains the next anonymous number identifier in the sequence.

- **FILE FOLDERS (HARD COPIES)**
- **SCANNING**
- **E-FILING (WORD.DOCX FOLDERS)**

Graphic Summary



Summary

The process consists of eight well-defined steps and each step entails several steps. A VDA application or written request is assigned by the Director of the National Nexus Program to a principal MTC staff person, usually on a rotating basis, i.e., one person, then the next, then the next, then back to the first. However, the associate director is assigned significantly fewer Files due to his other responsibilities.

Snap Shot view of the daily steps and tasks performed by MTC Staff in the Voluntary Disclosure Administrative Process:

- Nexus director phones applicant to welcome him and to answer any questions, then assigns the File to a paralegal or the associate director.
- assigned staff person sends taxpayer a courtesy e-mail introducing herself to the taxpayer, providing her contact info;
- she enters taxpayer contact info into database if not automatically captured during on-line application contact.
- She enters taxpayer financial data into database

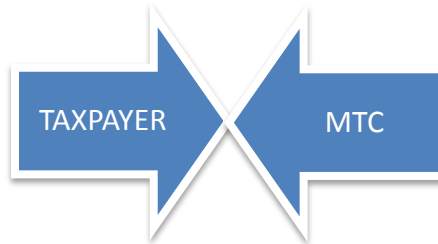
- Staff creates an electronic File in the sub-directory:
P:\shared\MTC Departmental\Nexus\Voluntary Disclosure\AnYY\YY-XXX (An is short for *anno*, year);
- Staff evaluates the taxpayer's File and determines whether more information is needed;
- Staff creates Exhibit 1 and Exhibit 2. Exhibit 1 is the estimated tax due. Exhibit 2 is the taxpayer's statement of representations regarding its factual situation.
 - *Exhibit 1:* If the information the taxpayer has provided on the Application is sufficient, it will include the "good faith estimate," the amount of liability the taxpayer estimates to owe each of its requested States.
 - *Exhibit 2:* If the information the taxpayer has provided on the Application is sufficient (all questions have been answered), the Staff member proceeds to process the application. Alternatively, if the information is found to be insufficient (incomplete application) Staff must request additional information before it can proceed with the File. *Exhibit 2* should also have the appearance as to avoid any state improprieties, i.e., each state's *Exhibit 2* should be state specific and not provide any information regarding any other state (confidentiality should be observed). If inappropriate, Staff redact *Exhibit 2* with the taxpayer's permission to include only the requested state's information.
- Staff creates the Lookback cover page. This page contains all of the taxpayer's requested states and the appropriate lookback dates for the type of taxes in question;
- Staff creates the draft Agreement and sends a cover letter to the taxpayer describing the basic terms of the Agreement;
- Staff sends taxpayer special instructions for those states that have special VDA procedures;
- Staff e-mails the cover letter, draft Agreement, lookback cover page, and any special procedure documents to the taxpayer for review and approval; secure e-mail is not used because the documents do not identify the taxpayer other than by anonymous number;
- Staff prepares the NNP Anonymous MTC YY-XXX "Draft/MTC Signature Page" folder. This folder is prepared for the Executive Director's signature. The Executive Director

must have a review of the status of all states in the File, the status sheet and the dollar break down by State, before he signs an Agreement. This folder includes:

- **Cover Memo to Executive Director stating the description of the taxpayer;**
 - **MTC Signature Page; and**
 - **Financial Data of the taxpayer (this document lists the taxpayer's requested states and the good faith estimated amount of tax liability due in each state).**
- **Staff gets Executive Director's signature on MTC Signature Page.**

STEP 1. CONTACT MADE BY TAXPAYER (PRE-APPLICATION ACTIVITY)

- taxpayer submits application to the Voluntary Disclosure Program.



- **OR, without submitting the entire application, taxpayer may secure protection per the Procedures of Multistate Voluntary by submitting a writing that:**
 - is in writing (e-mail okay)
 - states an intention to pursue voluntary disclosure
 - names the intended States; and
 - gives the last digit of the taxpayers FEIN or other information sufficient to distinguish it from other taxpayers without disclosing its identity (this prevents a tax representative from substituting a taxpayer)

The application may be submitted in these formats:

- **On-line.** Taxpayer can fill out the on-line VDA application. The online application does not work about 15% of the time, likely because it was created in 2007 and is no longer compatible with contemporary browsers.
- **Word.** Taxpayer can fill out the VDA application in Word and send it to the Nexus e-mail box or directly to a staff person.
- **PDF.** Taxpayer can download a pdf copy of the VDA application, fill it out manually (not a fill-in), scan it, and send it via e-mail to the Nexus mailbox, or by Postal Service, common carrier, or hand delivery (hand delivery is very rare)
- **taxpayer that makes contact with the National Nexus Program:**
 - taxpayer (company representative or accountant)
 - taxpayer Representative (attorney or CPA)
- **MTC Staff (director, assoc. dir., staff)**

The NNP Director receives all taxpayer contacts for Voluntary Disclosure

either by:

- **Nexus mailbox;**
 - **a telephone call; or**
 - **directly to his e-mail address**
- **The NNP Director immediately responds to the taxpayer by sending an acknowledgment e-mail or courtesy telephone call.**
- **The NNP Director then assigns the incoming requests to one of the principal VDA staff members (lawyer and/or paralegals).**

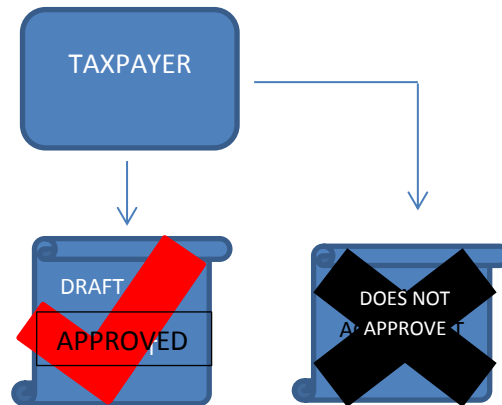
STEP II. DRAFT VDA SENT TO TAXPAYER FOR APPROVAL OF TERMS

MTC sends draft Agreement to the taxpayer for approval of agreement or its terms. The taxpayer's approval must be in a writing before an MTC staff person will proceed with the VDA process.



STEP III

RECEIVES TAXPAYER'S APPROVAL/COUNTER OFFER OF DRAFT VDA



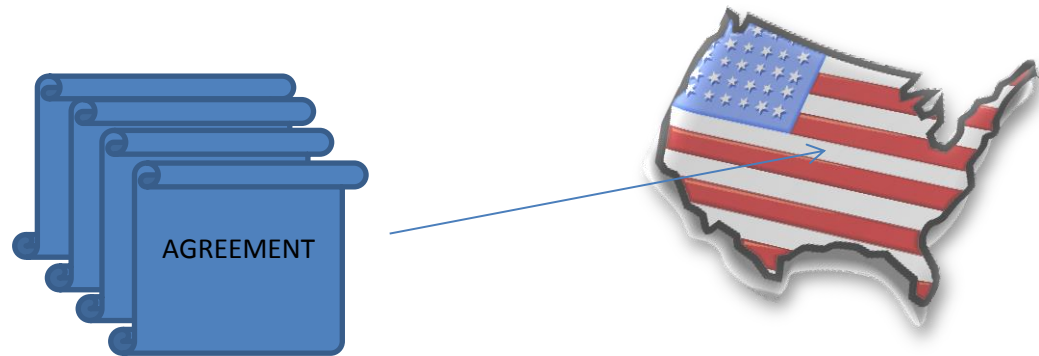
The taxpayer may counter offer for any number of reasons, including:

- wish to shorten the lookback period
- request to file a composite return
- proposal to calculate tax for the lookback period in a non-standard way (usually due to poor records)

Staff negotiates counter-offer terms on behalf of the states. Basic terms, such as the lookback period, are generally not negotiable, but staff tries hard to meet a taxpayer's particular needs or anxieties about certain language. Often a matter may be resolved simply by tightening the text language without a material change in meaning.

The process continues to the next step when the Commission and taxpayer agree on the text. Any changes from the standard text are of course pointed out to the state.

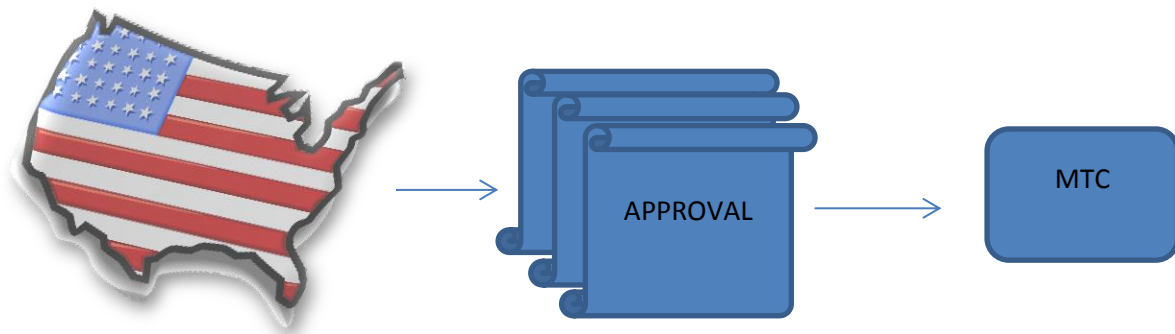
STEP IV. SEND THE PROPOSED AGREEMENT TO THE SELECTED STATES. The States have thirty days to respond, but there is no penalty for missing the deadline.



STEP V RECEIVES STATE'S APPROVAL, REJECTION OR COUNTER-OFFER

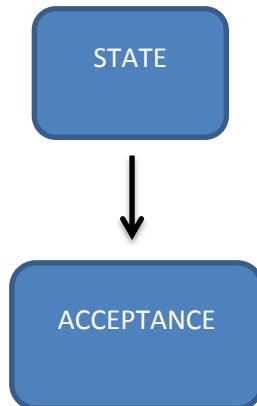
State Acceptance of the Agreement

The State will decide regarding the taxpayer's eligibility for the state's voluntary disclosure program. If acceptable, the State will sign the Agreement. After signing the Agreement, the State may return the Signed State Signature page to the principal MTC Staff member attached to an e-mail or by regular mail along with any other documents the taxpayer will need in order to come into compliance with that State, e.g., sales/use registration form, and instructions, and in some cases, the State will provide the actual return-forms or sample spreadsheets for the taxpayer to complete. States have a 30-day window in which to reply to all multi-state voluntary disclosure request. There is never any penalty for a state to miss a deadline other than allowing the taxpayer to continue its "protected discovery" status until the state acts (See *Procedures of Multistate Voluntary Disclosure*).



If a State does not respond by the review date, the Staff member sends the state a reminder e-mail.

STEP VI. Once the State's signed signature page is received, the following is done:



Prepare the contract:

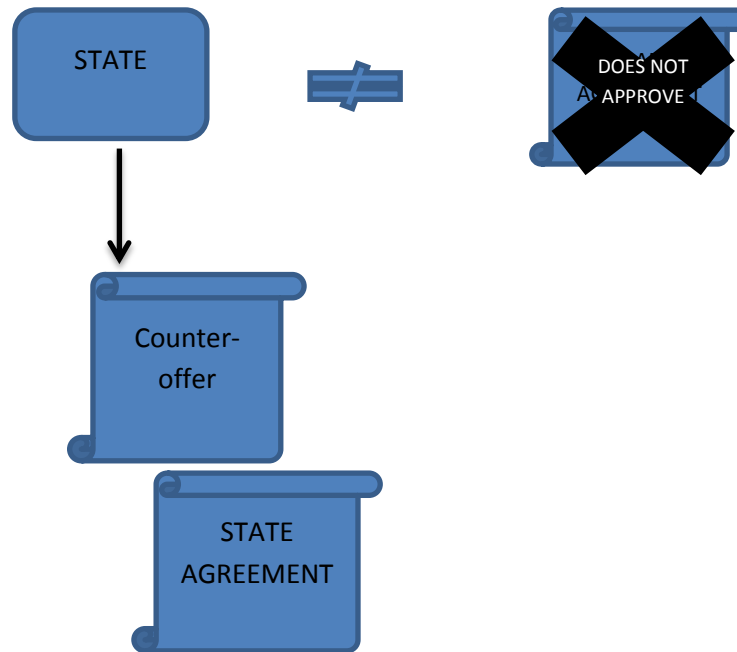
- prepare another copy of the contract (the states will keep the original copy and only return the signed state signature page);
- insert the signed state signature page into the Agreement
- insert the MTC signed signature page (the Executive Director must sign) into the Agreement; and
- attach another copy of Exhibit 2 (since the states may keep the copy originally sent to them).

Send the VDA package to the taxpayer. It includes:

- the Agreement (signed by the State and the MTC) any state documents, e.g., registration forms and instructions, state tax forms, samples of spreadsheets.
- acceptance letter from MTC staff member explaining to the taxpayer the next steps in the VDA process. The letter also includes:
 - the name of the state that has accepted the Agreement;
 - the length of time in which the taxpayer has to respond to this acceptance;
 - instruction for the taxpayer to sign the Agreement;
 - the appropriate forms and tax returns the taxpayer is required to submit; and
 - payments.
- State Rejection or Counter-offer of the Agreement

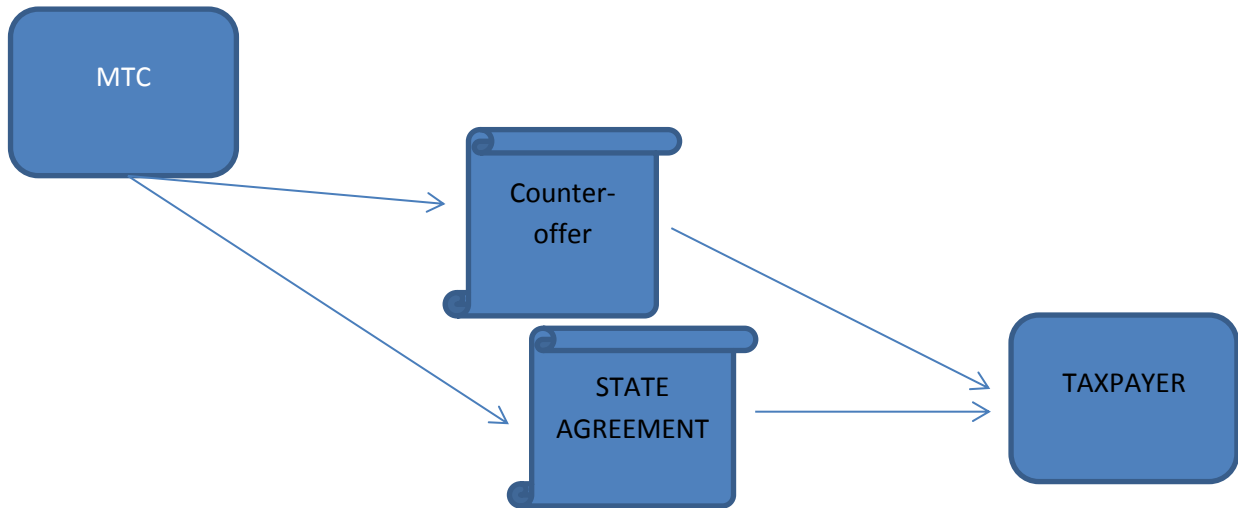
When a State rejects an Agreement, it will normally counter-offer. However, in some rare occasions a State will be unable to accept a certain type of Agreement and may provide a completely different alternative.

The counter-offer is the State's response made in objection to but not a total rejection of the taxpayer's VDA request usually for the following reasons:



- amended returns. States do not allow amended returns to be filled under the Agreement; or
- state Agreements. State providing its own Agreement for a certain of type of taxpayer will not accept the standard multi-state Agreement (the multi-state Agreement contains all standard terms and language approved by the Nexus Committee); or
- non-standard language. Any non-standard language added to the Agreement at the taxpayer's request must be approved by the NNP Director before it is incorporated into the Agreement and then approved by the State; or
- revised lookback periods. Usually a state's standard lookback period is firmly enforced; or
- if the facts of the application are not clear or are inconsistent with the Agreement's terms.

Once the State's counter-offer is received, the following is done:



Staff immediately sends the counter-offer under cover letter to the taxpayer. The taxpayer at this time is made aware that its request was not accepted but that the State is willing to accept an agreement with this taxpayer if certain conditions are met.

- the cover letter states the name of the State making the counter-offer;
- inquires whether the taxpayer will accept or reject the State's offer;
- inquires as to how the taxpayer would like to proceed (i.e., ask whether the taxpayer has made a counter-proposal);
- informs the taxpayer that he has 30 days to respond.

If the taxpayer approves of the counter-offer, the principal staff person will revise the original Agreement in accordance with the terms of the State's counter-offer.

If the taxpayer does not approve of the State's counter-offer and he/she makes a counter-proposal the MTC Staff person:

- sends the taxpayer's counter-proposal to the State for approval;
- waits to hear back from the State before moving forward; and
- continues to monitor the both the State and the taxpayer's response times so that the negotiation process does not exceed a 30-day period (i.e., send reminders to either party until an agreement can be reached).

State Agreements.

Staff sends a special cover letter to the taxpayer explaining the offer when a State sends its Agreement instead of signing the multi-state Agreement. The taxpayer has limited ability to change the materials terms of State Agreements. States strive to avoid making fine distinctions between the facts of individual taxpayers. Taxpayer has 30 days to respond.

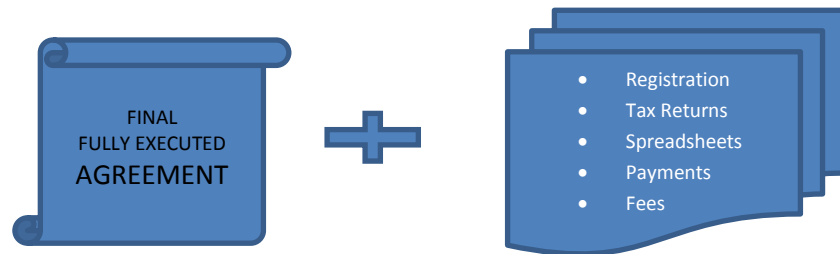
State Rejection of Agreement.

It is rare that a State will totally reject a taxpayer's request for voluntary disclosure unless the taxpayer had a prior contact in the State.

STEP VII. TAXPAYER RETURNS THE FULLY EXECUTED AGREEMENT ALONG WITH PAYMENTS AND REQUIRED TAX DOCUMENTS

Once a taxpayer has returned the complete VDA package which contains the following:

- the signed Agreement (must contain taxpayer's original signature)
- tax returns and/or spreadsheets, and
- applicable payments and fees

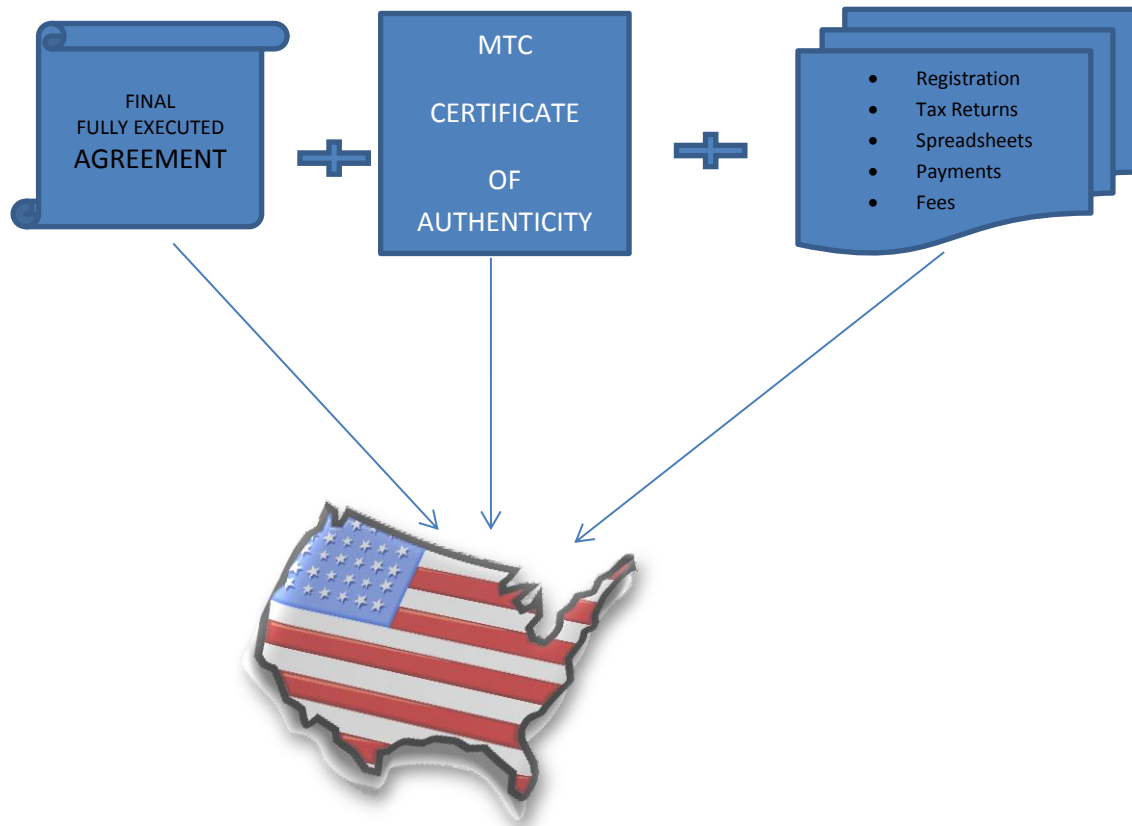


The following is done:

- The principal Staff person checks the VDA package to make sure it's complete. If any of the required documents have not been included in the VDA package, the Staff person does not continue processing it until it is completed.
- If all documents are accounted for in the VDA package the Staff person begins preparing the VDA documents for submission to the State
- Staff makes copies of original VDA documents and payments

STEP VIII. FINALIZATION OF AN AGREEMENT

Certified Agreement:



- **Prepare an Authenticity Page.** This page is placed immediately on top of the Agreement and must be signed by the principal MTC Staff person. This page certifies that the Agreement is a true and accurate copy of the original, which the MTC keeps in its files.
- **Prepare cover letter (*FINAL_[state]*).** The original cover letter goes to the State and a copy is made for the MTC's files.

- **Original Certified copy.** The MTC copy has an original State Signature Page, original taxpayer Signature Page, MTC Signature Page, and *Exhibits 1 and 2*.
- **The State copy.** Copy of the Original Certified Agreement

Registration/Returns/Spreadsheets/Payments:

- **Registration.** Staff makes copy of the registration form.
- **Returns.** Staff makes a copy of the first page of each return.
- **Spreadsheets.** Staff makes copies of all spreadsheets of tax due (used only for sales/use tax).
- **Payments.** Staff makes photocopies of all checks included in the VDA package.

Attach copies of the registration form, the first page of each return, the spreadsheets, and all checks to the MTC Authenticated Copy.

File MTC Authenticated hard copy in the appropriate State's paper file folder in the filing cabinet.

Glossary

A

Agreement The VDA contract between the State, MTC, and the taxpayer

C

Certified Authentication cover sheet for VDA

E

Exhibit 1 Taxpayer's Good faith estimate of liability at issue

Exhibit 2 Taxpayer's Statement of representations and inducements

F

Final/Finalized Fully executed VDAs (signed by taxpayer, state, and MTC)

I

Intent Taxpayer's commitment to voluntarily come forward and resolve all of its state tax issues.

M

MTC Party to the Agreement. Multistate Tax Commission.

N

NNP National Nexus Program

Nexus Contacts with a State sufficient to create taxing jurisdiction.

S

States Party to the Agreement.

T

taxpayer Party to the Agreement. A natural person, corporation or any other entity with a filing obligation.

| | |
|---------------------------|---|
| Tax Representative | Non-employee of the taxpayer who represents the taxpayer, e.g., CPA or lawyer. |
|---------------------------|---|

V

| | |
|------------|---------------------------------------|
| VDA | Voluntary Disclosure Agreement |
|------------|---------------------------------------|

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|--------------------------------------|--|
| Voluntary Disclosure Database | The official database of the NNP that keeps track of VDA payments received and the status of disclosures. |
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